

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of:)	
)	
Rules and Regulations Implementing the)	CG Docket No. 04-53
Controlling The Assault of Non-Solicited)	
Pornography and Marketing Act of 2003)	
)	
)	
Rules and Regulations Implementing the)	CG Docket No. 02-278
Telephone Consumer Protection Act of 1991)	

REPLY COMMENTS OF THE VERIZON TELEPHONE COMPANIES¹

The Telephone Consumer Protection Act of 1991 (“TCPA”) and Commission rules prohibit using automatic telephone dialing systems (“auto-dialers”) and pre-recorded messages to call “telephone number[s] assigned to . . . cellular telephone service.” 47 U.S.C.

§ 227(b)(1)(A)(iii); 47 C.F.R. § 64.1200(a)(1)(iii). The overwhelming majority of commenters agree that, with the November 24, 2003 advent of intermodal local number portability – which makes it difficult to determine which telephone numbers belong to wireless customers – the Commission should adopt a “safe harbor,” so that companies that have reasonable, documented processes and controls in place for preventing those calls are not penalized for inadvertently making auto-dialer or pre-recorded message calls to wireless numbers that recently have been ported. At this time, it is premature for the Commission to adopt a “sunset” date for any safe harbor rule.

¹ These Comments are being filed on behalf of the Verizon Telephone Companies, which are listed in Attachment A.

I. THE COMMISSION SHOULD ADOPT A LIMITED SAFE HARBOR FOR AUTO-DIALER AND PRERECORDED MESSAGE CALLS TO WIRELESS CARRIERS.

Verizon takes seriously its obligation to comply with the TCPA's prohibition on auto-dialer and prerecorded message calls to wireless consumers. However, as several commenters have noted, with the advent of intermodal local number portability, it has become increasingly difficult to avoid inadvertent calls to wireless telephone numbers.² The Commission should adopt a limited "safe harbor" for companies that have reasonable, documented processes and controls in place to avoid making prohibited calls to wireless customers that have recently ported from wireline service.

Importantly, any safe harbor rule must *not* excuse willful violations of the ban on using auto-dialers or pre-recorded messages to call wireless numbers. That is, the rule should not be worded in such a way as to allow unscrupulous marketers a 30 or 31-day "free pass" to target wireless customers.³ It also should not permit a company to receive safe harbor immunity if it adopted weak or ineffective processes for preventing such calls. Rather, the safe harbor should

² See, e.g., Cingular Wireless Comments, at 3 (discussing problems with pooling and contaminated number blocks); NASUCA, at 2-3 (noting that there may be inadvertent calls to wireless numbers, and supporting a limited safe harbor); SBC Communications Comments, at 2 (noting that marketers need time to "scrub" data against wireless ported number lists); Direct Marketing Association and Newspaper Association of America Comments, at 2 ("DMA Comments") (noting that "Any list obtained from NeuStar will contain only the wired numbers that would have ALREADY been ported to wireless prior to creation of the list" and arguing that "To avoid violation of the TCPA, [marketers] would have to cease making ALL calls."). See also *In the Matter of Rules and Regulations Implementing the Controlling the Assault on Non-Solicited Pornography and Marketing Act of 2003, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, Notice of Proposed Rulemaking and Further Notice of Proposed Rulemaking, CG Docket Nos. 04-53, 02-278, FCC 04-52, ¶ 45 & n. 98. (rel. March 19, 2004) ("Notice").

³ Many commenters have proposed a 30 or 31-day safe harbor rule. See, e.g., Cingular Wireless Comments, at 4 (supporting 31-day safe harbor); SBC Communications Comments, at 2 (31-day safe harbor); American Council of Life Insurers Comments, at 4 (31-day safe harbor); AT&T Comments, at 1 (30-day safe harbor); and DMA Comments, at 4 (30-day safe harbor).

apply only if companies have internal procedures to prevent such calls and maintain records documenting this process.

Verizon has been working with NeuStar, the third party administrator of the Number Portability Administration Center, to develop a process for identifying wireless numbers that have recently been ported from wireline service, to make sure they are excluded from any auto-dialer or pre-recorded message calling campaigns.⁴ However, even if Verizon obtains a daily update from NeuStar, there are inherent lags in the process that prevent Verizon from being able to guarantee that it will never inadvertently dial a wireless number. Several parties noted these problems in their comments. *See* note 2, *supra*. Indeed, the Commission itself has recognized that “once a number is ported to a wireless service, a telemarketer may not have access to that information immediately in order to avoid calling the new wireless number.” Notice, ¶ 48.⁵

Even if there were no delay associated on the NeuStar end – that is, even if NeuStar updates its database as soon as wireless numbers are ported, and companies are able to simultaneously obtain access to that database – there is an inherent lag time before companies can integrate that information for existing calling campaigns. The information obtained from

⁴ Based on privacy concerns, Verizon supports NeuStar’s efforts to require strict confidentiality of information regarding wireless numbers. For example, public disclosure of lists of wireless numbers could proliferate unwanted commercial messages to wireless short message service (“SMS”). This is the case because the wireless number is most often all the information a company needs to send “spam” messages.

⁵ One commenter Call Compliance, Inc. (“CCI”) claims to have a patented process that would allow for “real-time blocking of telephone calls to wireless telephone numbers,” although it does not appear that this process is (or necessarily ever will be) commercially available. CCI Comments, at 1 (stating that it “would be able to provide such a service, but the decision to do so will be based upon market needs”). Verizon does not have enough information to determine whether such a service would work with Verizon’s processes, or whether it would be provided to all companies at a cost that would be affordable. But, even if such a product is made available, CCI has stated that there are certain wireless calls that it would not be able to identify or block. *See id.*, at 3-4. Thus, even if CCI’s processes were made available to all companies, the FCC still should develop rules that would protect telemarketers against inadvertent calls to recently ported wireless numbers. *Id.*, at 4.

NeuStar is only part of the equation. In addition to obtaining a list of numbers from NeuStar that need to be suppressed for TCPA compliance, Verizon must identify the initial lists of numbers to call, scrub those numbers against the NeuStar data (and relevant do-not-call lists⁶), and send the list to the third party vendors who make the calls. Verizon also requires its third party vendors to rescrub their lists on a regular basis.

The Notice asks whether it would be appropriate to set a sunset date for any safe harbor rule. *Notice*, ¶ 49. If any safe harbor provisions are adopted, it is premature at this time to consider any sunset of those provisions, when it is unclear when (or if) there will ever be commercially available, affordable processes for ensuring real-time compliance with the TCPA's requirements for recently ported wireless telephone numbers.

II. CONCLUSION

For the foregoing reasons, Verizon encourages the Commission to adopt a limited safe harbor for using an auto-dialer or pre-recorded messages to call wireless numbers.

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⁶ Of course, companies have an independent obligation to comply with the do-not-call rules, regardless of how the Commission rules on the TCPA safe harbor issue.

THE VERIZON TELEPHONE COMPANIES

The Verizon telephone companies are the local exchange carriers affiliated with Verizon Communications Inc. These are:

Contel of the South, Inc. d/b/a/ Verizon Mid-States
GTE Midwest Incorporated d/b/a/ Verizon Midwest
GTE Southwest Incorporated d/b/a/ Verizon Southwest
The Micronesian Telecommunications Corporation
Verizon California Inc.
Verizon Delaware Inc.
Verizon Florida Inc.
Verizon Hawaii Inc.
Verizon Maryland Inc.
Verizon New England Inc.
Verizon New Jersey Inc.
Verizon New York Inc.
Verizon North Inc.
Verizon Northwest Inc.
Verizon Pennsylvania Inc.
Verizon South Inc.
Verizon Virginia Inc.
Verizon Washington, DC Inc.
Verizon West Coast Inc.
Verizon West Virginia Inc.